

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Broker License of:

No. 09F-BD004-BNK

3 **ACHATES FINANCIAL SERVICES
GROUP, LLC**

4 10000 N. 31st Ave., Ste. B109
Phoenix, AZ 85051

5 Respondent.

**ORDER OF SUMMARY SUSPENSION
AND NOTICE OF HEARING TO REVOKE**

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AUG 05 2008

O.A.H.

7 The Arizona Department of Financial Institutions (the "Department") hereby finds that
8 Achates Financial Services Group, LLC ("Respondent") has violated the provisions of the Arizona
9 Revised Statutes ("A.R.S."), Title 6 as set forth below and finds that the public health, safety and
10 welfare require emergency action pursuant to A.R.S. §§ 6-905 and 41-1092.11(B).

11 **THEREFORE, IT IS ORDERED** to summarily suspend the Arizona mortgage broker
12 license held by Respondent, effective immediately, pending the proceedings for revocation or other
13 action commenced this date. **This suspension is effective immediately.**

14 EFFECTIVE this 4th day of August, 2008.

16 

17 Felecia A. Rotellini
18 Superintendent of Financial Institutions

19 **NOTICE OF HEARING AND COMPLAINT**

20 PLEASE TAKE NOTICE that, pursuant to A.R.S. §§ 6-138, and 41-1092.02, the above-
21 captioned matter will be heard through the Office of Administrative Hearings, an independent
22 agency, and is scheduled for September 15, 2008, at 9:00 a.m., at the Office of Administrative
23 Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

24 The purpose of the Hearing is: (1) to determine whether grounds exist to suspend or revoke
25 Respondent's mortgage broker license; (2) to order any other remedy necessary or proper for the
26 enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-

1 123 and -131; and (3) to impose a civil money penalty pursuant to A.R.S. § 6-132.

2 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
3 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
4 or expressed, to the Director of the Office of Administrative Hearings or the director's designee to
5 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
6 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
7 of Administrative Hearings has designated Lewis Kowal at the address and phone number listed
8 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative
9 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
10 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
11 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
12 Judge is specifically prohibited from entering.

13 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
14 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
15 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
16 Administrative Hearings.

17 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
18 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity
19 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses
20 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to
21 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),
22 any person may appear on his or her own behalf or by counsel.

23 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
24 made by a court reporter or by electronic means. Any party that requests a transcript of the
25 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

26 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant

1 Attorney General Kelly LaPrade, (602) 542-7726, 1275 West Washington, Phoenix, Arizona 85007.

2 **NOTICE OF APPLICABLE RULES**

3 The hearing will be conducted pursuant to A.A.C. R20-4-1201 through R20-4-1220 and the
4 rules governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
5 R2-19-122. A copy of these rules is enclosed.

6 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**
7 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's
8 position or defense and shall specifically admit or deny each of the assertions contained in this
9 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain
10 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall
11 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.
12 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an
13 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.
14 Any defense not raised in the answer is deemed waived.

15 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**
16 **deemed in default** and the Superintendent may deem the findings in this Notice of Hearing as true
17 and admitted and the Superintendent may take whatever action is appropriate, including (1)
18 suspension or revocation of Respondent's license; (2) any other remedy necessary or proper for the
19 enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-
20 123 and 6-131; and (3) imposing a civil money penalty pursuant to A.R.S. § 6-132.

21 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial
22 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
23 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
24 Arizona 85007 and to Assistant Attorney General Kelly LaPrade, Consumer Protection & Advocacy
25 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

26 **Persons with disabilities may request reasonable accommodations such as interpreters,**

1 **alternative formats, or assistance with physical accessibility.** Requests for special
2 accommodations must be made as early as possible to allow time to arrange the accommodations. If
3 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

4 FINDINGS

5 1. Respondent Achates Financial Services Group, LLC (hereinafter "AFSG") is an
6 Arizona Corporation authorized to transact business in Arizona as a mortgage broker, license
7 number MB 0905092, within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of AFSG's
8 business is that of making, negotiating, or offering to make or negotiate loans secured by Arizona
9 real property, within the meaning of A.R.S. § 6-901(6).

10 2. Before conducting business as a mortgage broker, AFSG is required to have a
11 surety bond, deposited with the Superintendent, in the required amount, pursuant to A.R.S. § 6-
12 903(H).

13 3. On or about April 18, 2008, the Department received a Notice of Cancellation from
14 Great American Insurance Company, stating that AFSG's surety bond, number 397-89-13-840038,
15 in the amount of ten thousand dollars (\$10,000.00) would be cancelled effective May 16, 2008.

16 4. On or about April 21, 2008, the Department attempted to send Marlene S.
17 Swedlund ("Ms. Swedlund"), the President of AFSG, a letter notifying her that a lapse in bond
18 coverage is a serious violation providing information detailing how AFSG could avoid suspension
19 due to bond cancellation. The letter was sent certified, article number 7001 1140 0000 3473 9176 to
20 AFSG's address of record with the Department at 10000 N. 31st Ave., Ste. B109, Phoenix, AZ
21 85051. The certified letter was signed for on April 30, 2008.

22 5. On or about May 21, 2008, the Department attempted to send two e-mails notifying
23 Respondent that the Department had not received a bond reinstatement notice or a new bond;
24 however, the e-mails were not deliverable.

25 6. Respondent failed to respond to the Department's correspondence and failed to
26 obtain the required surety bond.

7. AFSG does not have the required surety bond in order to conduct business as a mortgage broker.

8. The mortgage broker license of AFSG is suspended.

9. The conduct described above constitutes an immediate threat to the public health, safety, and welfare warranting immediate suspension of Respondent's mortgage broker license because Respondent is conducting business in Arizona as a licensed mortgage broker without the required surety bond.

10. The conduct described above constitutes grounds for revocation pursuant to A.R.S. § 6-905(A)(3).

LAW

1. Pursuant to A.R.S. Title 6, Chapter 9, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage broker business and with the enforcement of statutes, rules, and regulations relating to mortgage brokers.

2. By the conduct set forth above in the Complaint, Respondent violated A.R.S. § 6-903(H) by failing to maintain the required surety bond

3. Respondent has not conducted business in accordance with the law and violated Title 6, Chapter 9 and the rules relating to this chapter, which are grounds for suspension or revocation of Respondent's license pursuant to A.R.S. § 6-905(A)(3).

4. The violations, set forth above, constitute grounds for the pursuit of any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

5. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes are grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the above described violations or other grounds for disciplinary action, the Superintendent may: (1)

1 suspend or revoke Respondent's mortgage broker license pursuant to A.R.S. § 6-905; (2) order any
2 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
3 brokers in Arizona under A.R.S. §§ 6-123 and 6-131; and (3) impose a civil money penalty pursuant
4 to A.R.S. § 6-132.

5 DATED this 4th day of August, 2008.

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8 Felecia A. Rotellini
9 Superintendent of Financial Institutions

10
11 ORIGINAL of the foregoing filed this 4th
12 day of August, 2008, in the office of:

13 Felecia Rotellini
14 Superintendent of Financial Institutions
15 Arizona Department of Financial Institutions
16 ATTN: Susan Longo
17 2910 N. 44th Street, Suite 310
18 Phoenix, AZ 85018

19 COPY mailed/delivered same date to:

20 Lewis Kowal, Administrative Law Judge
21 Office of the Administrative Hearings
22 1400 West Washington, Suite 101
23 Phoenix, AZ 85007


24 Kelly LaPrade, Assistant Attorney General
25 Attorney General's Office
26 1275 West Washington
Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent
Richard Fergus, Licensing Manager
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

1 AND COPY MAILED SAME DATE, by
2 Certified Mail, Return Receipt Requested to:

3 Marlene S. Swedlund, President
4 Achates Financial Services Group, LLC
10000 N. 31st Ave., Ste. B109
Phoenix, AZ 85051

5 Michael A. Riberal
6 Statutory Agent for:
Achates Financial Services Group, LLC
5853 W. McLellan Blvd.
7 Glendale, AZ 85301

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